



03-CV-02385-CMP

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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JESSE CARD
2928 HOYT AVE., APT. B
EVERETT, WA 98201

Plaintiff,

v.

CITY OF EVERETT, WASHINGTON
2930 WETMORE AVE.
EVERETT, WA 98201

and

FRANK ANDERSON, in his official capacity as
Mayor of Everett, Washington.
2930 WETMORE AVE.
EVERETT, WA 98201

Defendants.

CV03 2385L

Civil Action No. _____

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. Plaintiff, JESSE CARD, challenges the City of Everett, Washington's acceptance, installation, maintenance and display of a granite Ten Commandments monument (the

Complaint for Declaratory
and Injunctive Relief - Page 1

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312081 SASS ORIGINAL

1 "Monument") on public property. The Monument sits in front of the old Everett City Hall,
2 which now serves as Everett's central police station. The City of Everett's display of the
3 Monument violates the Establishment Clause of the First Amendment to the United States
4 Constitution, made applicable to the States through the Fourteenth Amendment, and deprives
5 Plaintiff of his constitutional rights in violation of 42 U.S.C. § 1983. Additionally, the display
6 of the Monument contravenes Article One, Section 11 of the Washington Constitution.
7 Accordingly, Plaintiff seeks a declaration that the display of the Monument violates his federal
8 and state constitutional rights, a permanent injunction requiring removal of the Monument,
9 *reasonable costs and attorneys fees, and such other relief as the Court may deem appropriate.*

10 JURISDICTION AND VENUE

11 2. This Court has subject matter jurisdiction over this action pursuant to: 28 U.S.C.
12 § 1331, which confers original federal question jurisdiction over claims arising under the laws
13 and Constitution of the United States; 28 U.S.C. § 1343(a)(3) and (4), which grant original
14 jurisdiction to hear claims asserted pursuant to 42 U.S.C. § 1983 to redress the deprivation,
15 under color of State law, of any rights, privileges, and immunities guaranteed under the
16 Constitution of the United States or by Act of Congress; and 28 U.S.C. § 1367, which grants
17 supplemental jurisdiction over all claims that are so related to claims in the action within
18 original jurisdiction, such that they form part of the same case or controversy. The violations of
19 the United States Constitution and the Washington Constitution both arise out of the City of
20 Everett's acceptance, installation, maintenance, and display of the Ten Commandments
21 monument.

22 3. This Court has authority to grant declaratory relief in this matter pursuant to 28
23 U.S.C. §§ 2201 and 2202, which grant this Court jurisdiction to enter declaratory relief in actual
24 controversies within its jurisdiction and to provide any additional necessary and proper relief.

25 4. This Court has authority to issue a permanent injunction in this matter pursuant to 42
26 U.S.C. § 1983 and Rule 65 of the Federal Rules of Civil Procedure.

6. Plaintiff, JESSE CARD, is an adult resident and citizen of Everett, Washington. Mr. Card lives two blocks from the old City Hall and the Monument. Mr. Card comes into contact with the Monument at least once a week, when carrying out routine business, shopping, and social activities within the City of Everett. Mr. Card is offended by the Ten Commandments display in front of the old City Hall because it conveys a message of state endorsement of religion in general, and a specific religious viewpoint in particular, and thereby ostracizes citizens who do not conform to the religious beliefs that the Monument expresses. Because of his aversion to this sectarian religious display, Mr. Card tries to avoid seeing the Monument whenever possible, although he often must travel by it.

7. Defendant, the CITY OF EVERETT, WASHINGTON, is a municipality established under the laws of the State of Washington. The City of Everett owns, controls, and maintains the land in front of the old City Hall, on which the Monument at issue sits.

8. Defendant FRANK ANDERSON is named in his official capacity as the mayor of Everett, Washington. The Mayor of the City of Everett has responsibility over all public buildings and grounds located within the City.

9. In the 1940s, one E.J. Ruegamer, a juvenile court judge in Minnesota, collaborated with movie producer Cecil B. DeMille, who was working on the film, "The Ten Commandments," in developing a plan to construct granite monuments inscribed with the Ten Commandments for display throughout the country. Judge Ruegmer contacted the Fraternal Order of Eagles ("FOE") to assist him in proliferating the Ten Commandments displays. Local chapters of the FOE financed the construction of granite monuments inscribed with the Ten Commandments and, throughout the 1950s, donated them to their local communities. In 1959,

1 the Everett Aerie of the Fraternal Order of Eagles donated a granite monument of the Ten
2 Commandments to the City of Everett, Washington.

3 10. On information and belief, on October 30, 1959, the City of Everett passed a
4 resolution accepting the granite Monument inscribed with the Ten Commandments from the
5 Everett Aerie of Eagles. This resolution stated, "moved by [C. Arvid] Johnson, seconded by
6 [George] Gerbert to accept a six-foot high Granite Monolith of the Ten Commandments from
7 the Everett Aerie No. 13, Fraternal Order of Eagles. Carried."

8 11. On December 19, 1959, the City of Everett unveiled the Ten Commandments
9 Monument in a ceremony, which took place at the flower bed located directly in front of the old
10 City Hall, where the Monument currently sits. This area was and continues to be under the City
11 of Everett's control.

12 12. The following individuals participated in the unveiling ceremony for the Monument
13 on December 19, 1959: Art Wester, the president of the Everett Aerie of Eagles; Judge
14 Lawrence Leahy; Mayor George Culmback; the Reverend Harold J. Nelson of the Delta Baptist
15 Church; the Reverend Edmond Long of the Perpetual Help Parish; the Reverend John Mattie of
16 the Immaculate Conception Parish; the Reverend Emerson Pent of the Bethel Baptist Church;
17 and Moe Silverstone of the Montifore Congregation.

18 13. Since its unveiling, the Monument has remained in the same location, on the flower
19 bed located directly in front of the old Everett City Hall, located at 3002 Wetmore Ave. (on the
20 west side of Wetmore Ave.), Everett WA, 98201.

21 14. Going west from Wetmore Ave. toward the old City Hall, there is an outer sidewalk,
22 followed by a long, thin flower bed, a few feet wide, followed by an inner walkway, followed
23 by another flower bed, which abuts the old City Hall. The Monument sits in the second flower
24 bed, which abuts the old City Hall, approximately thirty feet north of the front entrance to the
25 building. An individual coming from the north of the building must pass directly in front of the
26 Ten Commandments Monument to access the front entrance to the old City Hall.

1 15. Until recently, the old City Hall contained the Mayor's office and other official
2 administrative offices, serving as the seat of government and law enforcement in Everett.
3 Today, it houses the Everett police department.

4 16. The Ten Commandments Monument is made of granite and stands approximately
5 six-feet tall. The Monument is inscribed with the Ten Commandments, and this text constitutes
6 the vast bulk of the frontal surface area. The top of the Monument is shaped in the form of two
7 small tablets and contains ancient Hebrew script. A floral motif surrounds the tablets, and
8 between the tablets is the all-seeing Eye of Providence, similar to the Eye in the Great Seal of
9 the United States and depicted on the dollar bill. Immediately below the Eye is an American
10 eagle grasping the American flag. Below the text of the Ten Commandments are two Stars of
11 David, and in between the two Stars are the Greek letters Chi and Rho, superimposed upon each
12 other, which constitutes the oldest known monogram of Jesus Christ, sometimes known as a
13 Christogram.

14 17. The text of the Ten Commandments on the Monument reads:

15 the Ten Commandments

16 I AM the LORD thy God.

17 Thou shalt have no other gods before me.

18 Thou shalt not make to thyself any graven images.

19 Thou shalt not take the Name of the Lord thy God in vain.

20 Remember the Sabbath day, to keep it holy.

21 Honor thy father and thy mother, that thy days may be long upon the land which
22 the Lord thy God giveth thee.

23 Thou shalt not kill.

24 Thou shalt not commit adultery.

25 Thou shalt not steal.

26 Thou shalt not bear false witness against thy neighbor.

27 Thou shalt not covet thy neighbor's house.

28 Thou shalt not covet thy neighbor's wife, nor his manservant, nor his
 maidservant, nor his cattle, nor anything that is thy neighbor's.

1 18. Several years after erecting the Ten Commandments Monument, the City of Everett
2 established a war memorial "dedicated to the men and women who sacrificed their lives in the
3 service of our country." The memorial consists of three black marble slabs, approximately
4

1 seven feet high, which are flanked by two viewing benches and two short flagpoles. Names are
2 listed on the marble slabs, organized according to the particular wars.

3 19. The war memorial is located on the corner of Wetmore Ave. and Wall Street,
4 approximately ten feet north of the Ten Commandments Monument. The war memorial stands
5 in the corner of the second flower bed, which directly abuts the old City Hall.

6 20. When one stands on Wetmore Ave., facing west toward the old City Hall, the War
7 Memorial is only partially visible, because it is obscured by shrubbery and because of its inset
8 placement on the corner of the inner flower bed.

9 21. Other than the Ten Commandments Monument and the war memorial, the area in
10 front of the old City Hall contains no further monuments, memorials, or markers.

11 22. The City of Everett is responsible for the continued display of the Ten
12 Commandments Monument in front of the old City Hall and possesses the authority to remove it
13 from public property.

14 23. The Ten Commandments is a religious text setting forth instructions from God. It is
15 commonly understood to be associated with the Christian and Jewish faiths.

16 24. The acceptance, installation, maintenance, and display of the Ten Commandments
17 Monument in front of the old Everett City Hall constitute the unlawful endorsement of religion.

18 25. On several occasions, Americans United for Separation of Church and State has
19 written to representatives of the City of Everett, Washington urging the City to remove the
20 Monument. However, representatives of the City of Everett have refused to take any action to
21 cure the constitutional violation.

CLAIMS FOR RELIEF

Count One

**The First and Fourteenth Amendments
of the United States Constitution**

26. Plaintiff incorporates by reference all allegations set forth in paragraphs 1-25, above.

27. The First Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, prohibits the establishment of religion by the Defendants.

28. The Defendants' acceptance, installation, maintenance, and display of the Ten Commandments Monument on public property violate the First and Fourteenth Amendments to the United States Constitution because the Defendants' actions have the primary purpose and effect of advancing or endorsing religion.

Count Two

42 U.S.C. § 1983

29. Plaintiff incorporates by reference all allegations set forth in paragraphs 1-28, above.

30. Defendants have acted under color of state law in their acceptance, installation, maintenance, and display of the Monument, in violation of the First and Fourteenth Amendments to the United States Constitution.

31. Plaintiff is entitled to relief under 42 U.S.C. § 1983 because the deprivation of his constitutional rights occurred under color of state law.

Count Three

Article One, Section 11 of the Washington Constitution

32. Plaintiff incorporates by reference all allegations set forth in paragraphs 1-31, above.

33. Article 1, Section 11 of the Washington Constitution guarantees that no public money or property shall be appropriated or applied to any religious worship, exercise, or instruction, or for the support of any religious establishment.

35. The Defendants' acceptance, installation, maintenance, and display of the Ten Commandments Monument on public property violate Article One, Section 11 of the Washington Constitution.

WHEREFORE, in light of the foregoing, Plaintiff respectfully requests that that the Court:

2. Issue a permanent injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure and 42 U.S.C. § 1983 requiring the Defendants to remove the Ten Commandments Monument from the old Everett City Hall and forbidding its relocation to public property or property transferred to a private entity for the purpose of maintaining the Monument.

4. Award Plaintiff the reasonable attorneys' fees and costs incurred in this action, pursuant to 42 U.S.C. § 1988.

5. Grant such other and additional relief as the court deems just and proper.

Respectfully submitted, this 23 day of July, 2003,

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*Petition for Admission *Pro Hac Vice* Pending

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